Supreme Court, U. S.
FILED
MAY 29 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1784

MANSION HOUSE CENTER NORTH REDEVELOPMENT COMPANY,
MANSION HOUSE CENTER REDEVELOPMENT COMPANY,
MANSION HOUSE CENTER SOUTH REDEVELOPMENT COMPANY,
MANSION HOUSE CENTER NORTH REDEVELOPMENT CORPORATION,
MANSION HOUSE CENTER REDEVELOPMENT CORPORATION,
MANSION HOUSE CENTER SOUTH REDEVELOPMENT CORPORATION,
Petitioners

vs.

UNITED STATES OF AMERICA, Respondent
GERALD A. RIMMEL, RECEIVER, Respondent

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
for the Eighth Circuit

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. .....

MANSION HOUSE CENTER NORTH REDEVELOPMENT COMPANY,
MANSION HOUSE CENTER REDEVELOPMENT COMPANY,
MANSION HOUSE CENTER SOUTH REDEVELOPMENT COMPANY,
MANSION HOUSE CENTER NORTH REDEVELOPMENT CORPORATION,
MANSION HOUSE CENTER REDEVELOPMENT CORPORATION,
MANSION HOUSE CENTER SOUTH REDEVELOPMENT CORPORATION,
Petitioners

vs.

UNITED STATES OF AMERICA, Respondent

GERALD A. RIMMEL, RECEIVER, Respondent

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
for the Eighth Circuit

Petitioners, Mansion House Center North Redevelopment Company, Mansion House Center Redevelopment Company, Mansion House Center South Redevelopment Company, (each a Missouri limited partnership), and Mansion House Center North Redevelopment Corporation, Mansion House Center Redevelopment Corporation, Mansion House Center South

Redevelopment Corporation (each the respective corporate general partner of the above-named limited partnerships) respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit, entered in this proceeding on February 28, 1979.

I. OPINION BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit was rendered on February 28, 1979 and appears in the Appendix hereto, at p. A-25, *infra*.

II. JURISDICTION

The Judgment of the United States Court of Appeals was filed on February 28, 1979, and this petition for certiorari is being filed within ninety (90) days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

III. QUESTION PRESENTED

Whether the Court of Appeals erred in affirming the District Court's ruling that it (the District Court) was not bound in this cause by the automatic stay provisions of Chapter XII of the Bankruptcy Act with regard to certain bankruptcy court filings previously made by petitioners.

IV. STATUTORY PROVISION INVOLVED

Rule 12-43, Rules of Bankruptcy Procedure provides for the stay of commencement or continuation of any court or other proceedings against a debtor who has filed a Petition under Rule 12-6 or 12-7. Rule 12-43 is reproduced in full in the Appendix, p. A-32, *infra*.

V. STATEMENT OF THE CASE

This case was originally filed by the United States on behalf of the United States Department of Housing and Urban Development in January, 1976. It was styled *United States v. Mansion House Center North Redevelopment Company, Et Al.* It named eleven defendants, six of whom are petitioners in the instant case. The suit sought to recoup for the United States Department of Housing and Urban Development ("HUD") certain monies which the Government alleged had been spent in contravention of the regulatory agreements controlling day-to-day operation of the Mansion House Center and for other relief, both legal and equitable. For itself, it was a three tower apartment and hotel complex in downtown St. Louis, Missouri, containing some 1,200 units. Each of the three towers had been operated (since 1964) by a separate legal entity, i.e., the north tower was owned and operated by the Missouri limited partnership (and petitioners herein) Mansion House Center North Redevelopment Company.[1] Each of the three partnerships had identical partners, both generals and limiteds.

The then-Commissioner of the Federal Housing Administration ("FHA") had insured the original $12,000,000 (each) construction loans in 1964. Because of default, in 1972 he was forced to pay the proceeds of the insurance to the original insurance company-mortgagees and assume the security ownership himself for the Government. HUD has since replaced FHA as mortgagee. The suit herein named each of the three owning limited partnerships and both of each one's general partners, Mansion House Center, North, and South Redevelopment

---

[1]The Center and South Towers were owned and operated by the Mansion House Center and South Redevelopment Companies, respectively.

Corporations respectively, and Maurice B. Frank of Palm Beach, Florida, the sole individual general partner of each owning limited partnership. Effective July 31, 1976 however, Mr. Frank in writing resigned his position as individual general partner of each limited partnership in question. He cited age, health and family pressure as the reasons for his action.

In September, 1976 the District Court, the Honorable John F. Nangle, United States District Judge, Eastern District of Missouri, appointed Respondent Gerald A. Rimmel, a St. Louis attorney, as Receiver of the entire Mansion House project.

In late December, 1976, there were filed certain bankruptcy pleadings in the United States District Court in Bankruptcy for the Middle District of Florida at Orlando. See Appendix, p A-2, 4, *infra*. These filings placed the South Tower partnership in Chapter XII and its corporate general partner, the South Redevelopment Corporation in Chapter XI under the jurisdiction of the Bankruptcy Court in Florida. Petitioner's Florida counsel thereafter, by letter to the receiver demanded immediate possession of the assets in question. The Court's Receiver immediately requested instructions from the District Court. After evidentiary hearings during two days in January, 1977, the St. Louis Court held, in an Order and Memorandum dated February 4, 1977, that the partnership in question (on whose behalf Maurice B. Frank and the South Tower Redevelopment Corporation had filed the bankruptcy Chapter XII proceedings) was not the same partnership whose assets the Receiver then possessed. See, *United States v. Mansion House Center*, 426 F.Supp. 479 (E.D.Mo. 1977). This decision was based upon the fact that Maurice B. Frank had signed the bankruptcy petition (for the South Tower partnership) in his capacity as individual general partner. The Court found that, by virtue of Frank's resignation from that position in July,

1976, the petitioning partnership was not composed the same as the South Tower partnership, the assets of which Mr. Rimmel held (and holds) as Receiver.

It should be noted that in late September, 1976 certain of the other limited partners,[2] believing that Frank had failed to name and properly qualify a successor to himself as individual general partner of the three partnerships, formed "successor" limited partnerships owning the Mansion House project in its entirety, with entirely new general partners, although using the same partnership names. Mr. Frank and all of his interests were wholly excluded. Thereafter, in September, 1977, the United States amended its complaint in this case with leave and added (by way of a Court Ten) additional defendants – those being the "successor" partnerships and their general partners – and requested from the District Court a judgment declaratory in nature outlining the present composition of the entities owning the Mansion House Center. Then, in October, 1977, these new defendants filed a Motion for Summary Judgment, contending that they were entitled to ownership and possession after the Court-imposed receivership was terminated.

Then, in July, 1978, while the "successor" partnerships' motion for summary judgment was pending, each of the petitioners-redevelopment corporations, acting alone and as corporate general partners of the petitioners-redevelopment companies, caused to be filed bankruptcy petitions under Chapter XII of the Bankruptcy Act in the United States District Court in Bankruptcy for the Northern District of Illinois at Chicago. Appendix, p. A-7, *infra*. By letter to the Receiver,

---

[2] Maurice B. Frank also controlled a (sizable) interest in each partnership as a limited partner. He did not however, participate in this action.

petitioners asserted the stay provisions of Rule 12-43, Rules of Bankruptcy Procedure. Demand for turnover and debtor-in-possession status were not made, however.

The District Court's Receiver immediately filed a Request for Instructions from the Court and an Application for a Show Cause Order and Temporary Injunction. On July 17, 1978, the District Court, in an Order setting the matter for August 15 hearing, ruled that the Receiver was not bound by Rule 12-43 of the Rules of Bankruptcy Procedure and that he should continue to perform all of his duties at the Mansion House Center. This Order is contained in the Appendix, at p. A-19, *infra.*

On August 17, 1978, Judge Nangle issued an Order and Memorandum enjoining the instant petitioners from filing any bankruptcy or reorganization proceeding which claimed or asserted any ownership interest in the Mansion House Center. He further enjoined petitioners herein from asserting or claiming any such interest in the bankruptcy proceedings (still pending) in Chicago. This Order and Memorandum can be found in full in the Appendix, at p. A-20, 22, *infra.* The Chicago Bankruptcy Court, having originally set these cases for certain proceedings in September, 1978, has held all matters in abeyance awaiting the final outcome of this appeal.

On appeal to the Court of Appeals, contesting among others the issue of the effect of Rule 12-43 of the Rules of Bankruptcy Procedure upon the District Court's ability to proceed, the United States Court of Appeals for the Eighth Circuit affirmed the District Court by signed Opinion filed February 28, 1979. It is found in the Appendix herein, *infra,* p. A-25.

VI. REASONS FOR GRANTING THE WRIT

In its Opinion in this case, the United States Court of Appeals for the Eighth Circuit ruled that it was proper for the

District Court to proceed and enter such orders as it deemed necessary in this regard to bar inference with its receiver "(h)aving decided that the Frank group had no proprietary interests in the South partnership." Opinion p. 6, Appendix p. A-30. The court cited *United States v. Mansion House Center North Redevelopment Company, Et Al,* 426 F.Supp. 479 (E.D. Mo. 1977) as authority for this statement. Because of this, the Court of Appeals ruled that the District Court was not bound by the stay provisions of the Bankruptcy Act. The District Court had however, only ruled that a bankruptcy-petitioning limited partnership *with Maurice B. Frank as individual general partner* did not have any interest in the South partnership of Mansion House. The petitioners in the Chicago bankruptcies of July, 1978, contrary to the 1976 Florida bankruptcies, were not filed by Maurice B. Frank individually. A glance at the exhibits in the Appendix attached hereto will corroborate this.

The critical question presented here is whether the Court of Appeals erred in affirming the District Court's finding that it was not bound by Bankruptcy Rule of Procedure 12-43 and in relying as its basis for affirmance upon a contended faulty reading of the District Court's ruling of February 4, 1977, i.e. *United States v. Mansion House, supra.*

All this being so, the determination of a previous stay and concurrent divestiture of jurisdiction under Rule 12-43 must be studied. Rule 12-43(a) of the Rules of Bankruptcy Procedure, which supplements and reinforces the policy of Sections 11(a), 411, 414 and 428 of the Bankruptcy Act (see Advisory Committee Note to Rule 12-43), provides in pertinent part:

> "A petition filed under Rule 12-6 or 12-7 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the debtor, . . . or of any act or the commencement or continuation of any court pro-

ceeding to enforce any lien against his property, or of any court proceeding for the purpose of the rehabilitation of the debtor or the liquidation of his estate."

The language of Rule 12-43 is clear, unambiguous and enforceable. *Fidelity Mortg. Investors v. Camelia Builders, Inc.*, 550 F.2d 47, 53, 55, 57, 58 (2d Cir. 1976), *cert. denied*, 97 S.Ct. 707 (1977); *Texaco, Inc. v. Liberty Nat. B. & T. Co. of Okla. City*, 464 F.2d 389, 392, 393 (10th Cir. 1972). The commencement or the continuation of any proceeding against the debtor or its properties remains stayed unless modified, altered, terminated or annulled by the bankruptcy court pursuant to the provisions of Rule 12-43. *Fidelity Mortg. Investors v. Camelia Builders, supra.*

The authority and constitutionality of a bankruptcy court to enjoin litigants and other courts whether state or federal, has been affirmed and applied on numerous occasions. *Kalb v. Feuerstein*, 308 U.S. 433, 438, 439, 84 L.Ed. 370 (1940); *Fidelity Mortg. Investors v. Camelia Builders, Inc., supra; In re Career Academy Antitrust Litigation*, 359 F.Supp. 764, 766 (E.D. Wisc. 1975); *In re Colonial Realty Investment Co.*, 516 F.2d 154 (1st Cir. 1975); *Texaco, Inc. v. Liberty Nat. B. & T. Co. of Oklahoma City, supra, In re Decker*, 465 F.2d 294, 296, 297, 298 (3d Cir. 1972); *In re Wiltse Brothers Corporation*, 361 F.2d 295, 299, 300 (6th Cir. 1966); *In re Greyling Reallty Corporation*, 74 F.2d 734, 736 (2d Cir. 1935).

These fundamental tenets of the bankruptcy courts' exclusive jurisdiction and power to stay other proceedings were enunciated by the United States Court of Appeals for the Second Circuit in *Fidelity Mortg. Investors v. Camelia Builders, Inc., supra* at p. 53, 55. The Court of Appeals in interpreting the identical provisions contained in Section 311 of the Bankruptcy

Act (Chapter XI) and Rule 11-44 of the Rules of Bankruptcy Procedure stated that:

> ". . . Section 311 of the Bankruptcy Act, 11 U.S.C. §711, confides to the bankruptcy court 'exclusive jurisdiction of the debtor and its property, wherever located.' Statutes which confide exclusive jurisdiction to specialized courts are not to be construed in a manner which impairs that exclusivity. Exclusive jurisdiction means exclusive jurisdiction. *Fritz v. United States*, 535 F.2d 1192 (9th Cir. 1976).
>
> And, indeed, the need for exclusive jurisdiction in bankruptcy proceedings is compelling. Such jurisdiction is necessary 'to exclude any interference by the acts of others or by proceedings in other courts where such activities or proceedings tend to hinder the process of reorganization.' 6 Collier, *Bankruptcy* 3.03 at 424 (14th ed. 1972).
>
> When FMI filed its Chapter XI petition, the New York bankruptcy court, by virtue of §311, assumed exclusive jurisdiction over all of FMI's property interests. The Jackson condominium project was one such interest and, thus, §311 deprived the Mississippi state court of the jurisdiction which it exercised until then.
>
> It is not without significance that Rule 11-44 stays *'the commencement or the continuation' of proceedings against the debtor-in-possession.* (emphasis added) While the bankruptcy rules cannot, of course, expand the jurisdiction of the federal courts, we think it noteworthy that Rule 11-44 stays all actions, both state and federal, in progress when the bankruptcy petition is filed. Such a rule would be useless if those prior, pending actions deprive the bankruptcy courts of jurisdiction over the property involved in them. . . .
>
> The policy considerations underlying Rule 11-44 are considerable. The automatic stay of Rule 11-44 is designed to prevent a chaotic and uncontrolled scramble for the

debtor's assets in a variety of uncoordinated proceedings in different courts. The stay insures that the debtor's affairs will be centralized, inititally, in a single forum in order to prevent conflicting judgments from different courts and in order to harmonize all of the creditors' interests with one another.

Moreover, the rule itself provides a procedure for lifting the automatic stay. Rule 11-44(d) specifically mandates that motions to modify or lift stays established by Chapter XI petitions shall be heard on 'the earliest possible date.' There is even a provision which allows the bankruptcy judge to lift the Rule 11-44 stay without notice to the debtor-in-possession if quick action is necessary to prevent 'immediate and irreparable injury, loss or damage' to the creditors. Rule 11-44(3).

Rule 11-44 provides for an immediate hearing and relief from any hardship that an automatic stay might cause. In short, there is no constitutional infirmity in Rule 11-44 since that Rule itself gives the creditors an immediate opportunity to have the stay lifted or modified and since the policy considerations requiring such initial stays are not insignificant."

Similarly, like Rule 11-44, Rule 12-43 stays the commencement or continuation of any court proceedings against the debtor. Such stay is effective as to both state and federal courts unless proper steps are taken before the bankruptcy court. No such steps were taken here.

It is clear, therefore, that the District Court was prevented from continuing any proceeding or enjoining or doing any other act against the debtors herein or their property.

The stay, in particular, prevented the trial court from enjoining these debtors from proceeding with the Chapter XII petitions in any manner which they wished. This is especially

made clear when one realizes that upon the filing of a Chapter XII petition, exclusive jurisdiction over the debtors vests in the Bankruptcy Court (*In re Colonial Realty Investment Co., supra; In re Decker, supra; In re Potts*, 142 F.2d 383, 808 (6th Cir. 1944); *In re Forsyth Building Co.*, CCH, Bankruptcy Law Reports 63,066) and thereafter other Courts have no authority or jurisdiction to act in any manner which would interfere with the administartion of the estates of these debtors. *Kalb v. Feuerstein*, 308 U.S. 433, 435, 438, 439 (1940); *In re Wiltse Brothers Coropration, supra* at 299, 230; *Texaco, Inc. v. Liberty Nat. B. & T. Co. of Oklahoma City, supra* at p. 392. Such disruptive action would be in contravention of this supreme law of the land. The wisdom and desirability of the automatic stay provisions and automatic statutory ouster of jurisdiction are considerations for Congress alone. *Kalb v. Feuerstein, supra* at 439.

If parties wish to contest the jurisdiction of the bankruptcy court over certain property or if they wish to contest the authority of the entities who place the debtors within the jurisdiction of the bankruptcy court, the necessary and exclusive forum for adjudicating these issues is the bankruptcy court. *Taubel-Scott-Kitzmiller Co. v. Fox*, 264 U.S. 427, 433 (1924); *Cline v. Kaplan*, 323 U.S. 97, 98, 99 (1944); *In re Boylan*, 65 F.Supp. 105, 109 (1946); *In re M.J. Johnson Aircraft Mfg. Co.*, 110 F. Supp. 590 (1953). To hold otherwise is to ignore the supreme law of the land, *Kalb v. Feuerstein, supra* at 439, and is to ignore the codification of the policy by the Supreme Court in formulating the automatic stay provisions in Rule 12-43 of the Rules of Bankruptcy Procedure. *Texaco, Inc. v. Liberty Nat. B. & T. Co. of Oklahoma City, supra* at 392, 393.

Petitioners contend that, since the question of true ownership of the Mansion House Center was under submission at the

time of the Chicago Bankruptcy filings, and since these petitioners had not been previously enjoined from making such filings,[3] they were presumptively wholly within their rights in making those filings and the District Court erred in refusing to be governed by Rule 12-43 and the United States Court of Appeals erred in affirming that decision.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

FRANK A. BUSSMANN
Suite 220 Gutman Building
8003 Forsyth Boulevard
Clayton, Missouri 63105
314-721-8030
Attorney for Petitioners

[3]See Order appointing Receiver, at p A-.., infra and Memorandum in support, at 419 F.Supp. 85 (E.D. Mo. 1976), **United States v. Mansion House.**

APPENDIX

APPENDIX

UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION

In re

MANSION HOUSE CENTER SOUTH REDEVELOPMENT CORPORATION

Debtor

Include here all names used by debtor within last 6 years.

ARRANGEMENT No. 76-1112-ORL-BK-P

ORIGINAL PETITION UNDER CHAPTER XI

1. Petitioner's post-office address is 330 North 4th Street, St. Louis, Missouri 33480.
2. Petitioner is an affiliate of Winter Park Gardens, Inc., which is a debtor with a petition pending under the Bankruptcy Act in this District.
3. No other case under the Bankruptcy Act initiated on a petition by or against petitioner is now pending.
4. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter XI of the Act.
5. Petitioner is insolvent unable to pay his debts as they mature.
6. Petitioner intends to propose a plan pursuant to Chapter XI of the Act.

VERIFICATION

State of Florida County of Orange ss.:

INDIVIDUAL: I the petitioner named in the foregoing petition, do hereby swear that the statements contained therein are true according to the best om my knowledge, information, and belief.

CORPORATION: I Maurice B. Frank the President of the corporation named as petitioner in the foregoint petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief, and that the filing of this petition on behalf of the corporation has been authorized.

PARTNERSHIP: I a member – an authorized agent – of the partnership named as petitioner in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information and belief, and that the filing of this petition on behalf of the partnership has been authorized.

Subscribed and sworn to before me on

.....

Maurice B. Frank, Petitioner

.....

Official Character
NOTARY PUBLIC
My Commission Expires

OF 11-FL: Original petition under Chapter XI: verifications

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION

In re

MANSION HOUSE CENTER SOUTH REDEVELOPMENT CORPORATION
Debtor

Include here all names used by debtor within last 6 years.

EXHIBIT "A"

1. Petitioner's employer's idetification number is 43-6044502.
2. If any of petitioner's securiites are registered under section 12 of the Securities and Exchange Act of 1934, SEC file number is Not applicable.
3. The following financial data is the latest available information and refers to petitioners condition on 19 .
   a. Total assets: $25,000,000.00
   b. Liabilities:

		Approximate Number of Holders
Secured debt, excluding that listed below	$ 2	17,375,779.00
Debt securities held by more than 100 holders	$ -0-	-0-
Secured	$ -0-	-0-
Unsscured	$ -0-	-0-
Other liabilities, excluding contingent or unliquidated claims	$ 6	1,304,[illegible]0.07
Number of shares of common stock	500	2

   Comments, if any:
4. Brief description of petitioner's business: Income real estate.
5. The name of any person who directly or indirectly owne, controls, or holds, with power to vote, 25% or more of the voting securities of petitioner is Maurice B. Frank.
6. The names of all corporations 25% or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held, with power to vote, by petitioner are None

LIST OF CREDITORS

General Electric Pension Trust , One River Road Schnectady, New York 12345	$871,528.00
Coopers & Lybrand, Suite 2700, One Mercantile Center, St. Louis, Missouri 63101	8,250.00
Department of HUD, Washington, D.C.	17,375,779.00
Willowbrook Realty, 249 Royal Palm Way Palm Beach, Florida 33480	1,079,543.07
Louis Susman and Gary Heifetz, 7733 Forsyth St. Louis, Missouri	6,000.00
Tax Collector, St. Louis County Courthouse St. Louis, Missouri	162,216.00
Tax Collector, St. Louis City Hall St. Louis, Missouri	
Moran-Turner, N.Y., N.Y.	48,381.00

I certify the foregoing to be a true and correct copy of the original.

Wesley R. Thies, Clerk
United States District Court
Middle District of Florida

By: Cane B. Guion
Deputy Clerk

IN THE UNITED STATES DISTRICT FOR THE MIDDLE DISTRICT OF FLORIDA, ORLANDO DIVISION

In Proceedings for an Arrangement Under Chapter XII
No. 76-1113 ORL-BK-P

In Re:

MANSION HOUSE CENTER
SOUTH REDEVELOPMENT COMPANY,
a limited partnership,

Debtor.
IRS NO. 43-6050818

ORIGINAL PETITION UNDER
CHAPTER XII

1. Petitioner's post-office address is 330 North Fourth Street, St. Louis, Missouri 33480.

2. Mansion House Center South Redevelopment Corporation, a general partner of the petitioner has a petition under the Bankruptcy Act pending in this district.

3. No other case under the Bankruptcy Act initiated on a petition by or against petitioner is now pending.

4. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter XII of the Act.

5. Petitioner is unable to pay its debts as they mature.

6. Petitioner intends to file a plan pursuant to Chapter XII of the Act.

WHEREFORE, petitioner prays for relief in accordance with Chapter XII of the Act.

. . . . . .

JULES S. COHEN, P. A.
808 North Mills Avenue
Orlando, Florida 32803
Attorney for Petitioner

STATE OF FLORIDA
COUNTY OF ORANGE

WE, all of the general partners of the partnership named as petitioner in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of our knowledge, information and belief, and that the filing of this petition on behalf of the partnership has been authorized.

MANSION HOUSE CENTER SOUTH
REDEVELOPMENT CORPORATION
By: Maurice B. Frank
Maurice B. Frank, President

Maurice B. Frank,
General Partners

LIST OF CREDITORS

General Electric Pension Trust, One River Road Schnectady, New York 12345	$871,528.00
Coopers & Lybrand, Suite 2700, One Mercantile Center, St. Louis, Missouri 63101	8,250.00
Department of HUD, Washington, D.C.	17,375,779.00
Willokbrook Realty, 249 Royal Palm Way Palm Beach, Florida 33480	1,079,543.07
Louis Susman and Gary Heifetz, 7733 Forsyth St. Louis, Missouri	6,000.00
Tax Collector, St. Louis County Courthouse St. Louis, Missouri	162,216.00
Tax Collector, St. Louis City Hall St. Louis, Missouri	
Moran-Turner, N.Y., N.Y.	48,381.00

I certify the foregoing to be a true and correct copy of the original.

Wesley R. Thies, Clerk
United States District Court
Middle District of Florida

By: .....
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In Re:

MANSION HOUSE CENTER REDEVELOPMENT COMPANY
Debtor.
IRS No. 43-6050818

In Proceedings for an Arrangement Under Chapter XII of the Bankruptcy Act
No. 78 B 5161

TO: The Honorable Judge in Bankruptcy

ORIGINAL PETITION UNDER CHAPTER XII

1. Petitioner's post office address is 250 Royal Palm Way, Palm Beach, Florida, 33480.

2. No other case under the Bankruptcy Act initiated on a petition by or against petitioner is now pending.

3. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter XII of the Act.

4. Petitioner is unable to pay its debts as they mature.

5. Petitioner intends to file a plan pursuant to Chapter XII of the Act.

6. Petitioner has as its General Partner, the Mansion House Center Redevelopment Corporation, a Missouri Corporation in good standing in that state, whose registered agent is Frank A. Bussmann, attorney, at 8003 Forsyth Blvd., Clayton, Missouri 63105.

7. The aforesaid General Partner, the Mansion House Center Redevelopment Corporation, is wholly owned by REMSCO

Real Estate Associates, Ltd., an Illinois limited partnership whose principal office in Illinois is c/o Theodore Netzky, B. L. Rosenberg & Company, 180 North LaSalle Street, Chicago, Illinois.

8. Petitioner further states that it is named as a co-defendant in a suit styled United States of America v. Mansion House Center Redevelopment Company, case #76-20, pending in the United States District Court for the Eastern District of Missouri, Eastern Division, before the Honorable John Nangle, Judge, in Court Two, of which Complaint, judgment is prayed against this defendant for sums the Court may find due in breach of a Regulatory Agreement with the Department of Housing and Urban Development, on behalf of which the suit was instituted.

WHEREFORE, petitioner prays for relief in accordance with Chapter XII of the Act.

.....

Robert B. Chatz, one of the Attorneys
for Mansion House Center Redevelopment
Company

Of Counsel:
Robert B. Chatz
John W. Costello
Karen Gross
Phillip M. Heller
Arvey, Hodes, Costello & Burman
180 N. LaSalle Street
Chicago, Illinois 60601
312/855-5000

PARTIAL
LIST OF CREDITORS

General Electric Pension Trust (on note), One River Road, Schnectady, New York 12345; $1,747,928.00

General Electric Pension Trust (on Land); Lease on land owned by Mansion House Land Redevelopment Corporation until April 21, 2010 (62 yrs) at $137,376.00 per year, prior to any debt service.

Coopers and Lybrand, Suite 2700, One Mercantile Center, St. Louis, Missouri 63101; $8,250.00

Department of HUD, Washington, D.C.; $12,000,000.00 Mortgage in default; $3,333,000.00, Interest in default.

Moran-Turner, New York, New York; $50,000.00

United States of America; In its suit, *USA Mansion House North Redevelopment Co., et. al., vs. U.S. District Cov. for Eastern District of Missouri, filed 1/12/76*, the Government prays judgment against this partnership for funds allegedly wrongfully diverted in violation of their Regulatory Agreement. Obligations of the Partnership incurred since appointment of Receiver in September, 1976, in amounts unknown to Petitioner, inasmuch as there is no access to the information held exclusively by the receiver; Unknown

Farr Insurance, Inc., West Palm Beach, Florida; $1,666.66

STATE OF FLORIDA
COUNTY OF PALM BEACH

The undersigned, the Coroprate General Partner of the Partnership named as petitioner on the foregoing petition, by and through its President does hereby swear that the statements contained therein are true according to the best of its knowledge, information and belief, and that the filing of this petition on behalf of the partnership has been authorized.

MANSION HOUSE CENTER
REDEVELOPMENT CORPORATION
BY: .....
President of the General Partner

Subsecribed and sworn to before me on 7th of July .

.....
Notary Public

My Commission Expires:

Notary Public of Florida at Large; My Commission Expires Apr. 21, 1982. Bonded thru General Ins. Underwriters.

STATE OF FLORIDA
COUNTY OF PALM BEACH

The undersigned, General Partner of REMSCO Real Estate Associates, Ltd., an Illinois limited partnership, does hereby swear that this Partnership owns all the capital stock of Mansion House Center Redevelopment Corporation, the Corporate General Partner of the Petitioner, and does hereby swear that the statements contained therein are true according to the best of its knowledge, information and belief, and that the filing of this petition on behalf of the partnership has been authorized.

REMSCO REAL ESTATE ASSOCIATES, INC.
BY: .....
General Partner

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In Re:

MANSION HOUSE CENTER NORTH REDEVELOPMENT COMPANY
a Missouri limited partnership,
IRS NO. 43-6050816

In Proceedings for an Arrangement Under Chapter XII
of the Bankruptcy Act
NO. 78B5162

TO: The Honorable Judge in Bankruptcy

ORIGINAL PETITION UNDER
CHAPTER XII

1. Petitioner's post office address is 250 Royal Palm Way, Palm Beach, Florida, 33480.

2. No other case under the Bankruptcy Act initiated on a petition by or against petitioner is now pending.

3. Petitioner is qualified to file this portion and is entitled to the benefits of Chapter XII of the Act.

4. Petitioner is unable to pay its debts as they mature.

5. Petitioner intends to file a plan pursuant to Chapter XII of the Act.

6. Petitioner has as its General Partner, the Mansion House Center North Redebelopment Corporation, a Missouri Corporation in good standing in that state, whose registered agent is Frank A. Bussmann, attorney, at 8003 Forsyth Blvd., Clayton, Missouri, 63105.

7. The aforesaid General Partner, the Mansion Home Center North Redevelopment Corporation, is wholly owned by REMSCO Real Estate Associates, Ltd., an Illinois limited

partnership whose principal office in Illinois is c/o Theodore Netzky, the B. L. Roseberg & Company, 180 North LaSalle Street, Chicago, Illinois.

8. Petitioner further states that it is named as a co-defendant in a suit styled United States of America v. Mansion House Center Redevelopment Company, case #76-20, pending in the United States District Court for the Eastern District of Missouri, Eastern Division, before the Honorable John Nangle, Judge, in Cout Two, of which Complaint, judgment is prayed against the deefndant for sums the Court may find due in breach of a Regulatory Agreement with the Department of Housing and Urban Development, on behalf of which the suit was instituted.

WHEREFORE, petitioner prays for relief in accordance with Chapter XII of the Act.

.....
Robert B. Chatz, one of the Attorneys
for Mansion House Center North
Redevelopment Company

Of Counsel:
Robert B. Chatz
John W. Costello
Karen Gross
Phillip M. Heller
Arvey, Hodes, Costello & Burman
180 North LaSalle Street
Chicago, Illinois 60601
312/855-5000

STATE OF FLORIDA
COUNTY OF PALM BEACH

The undersigned, the Corporate General Partner of the Partnership named as petitioner on the foregoing petition, by and through its President does hereby swear that the statements contained therein are true according to the best of its knowledge, information and belief, and that the filing of this petition on behalf of the partnership has been authorized.

MANSION HOUSE CENTER NORTH
REDEVELOPMENT CORPORATION
BY:.....
President of the General Partner

Subscribed and sworn to before me on 7, of July, 1978.

.....
Notary Public

STATE OF FLORIDA
COUNTY OF PALM BEACH

The undersigned, General Partner of REMSCO Real Estate Associates, Ltd., an Illinois limited partnership, does hereby swear that this Partnership owns all the capital stock of Mansion House Center Redevelopment Corporation, the Corporate General Partner of the Petitioner, and does hereby swear that the statements contained therein are true according to the best of its knowledge, information and belief, and that the filing of this petition on behalf of the partnership has been authorized.

REMSCO REAL ESTATE ASSOCIATES, INC.
BY:.....
General Partner

PARTIAL
LIST OF CREDITORS

General Electric Pension Trust (on note), One River Road, Schnectady, New York 12345; $1,747,928.00

General Electric Pension Trust (on Land); Lease on land owned by Mansion House Land Redevelopment Corporation until April 21, 2040 (62 yrs) at $124,632.00 per year, prior to any debt service.

Coopers and Lybrand, Suite 2700, One Mercantile Center, St. Louis, Missouri 63101; $8,250.00

Department of HUD, Washington, D.C.; $12,000,000.00 Mortgage in default. $3,333,000.00 Interest in default.

Mran-Turner, New York, New York; $50,000.00

United States of America; In its suit, *USA Mansion House Center North Redevelopment Co. et. al., #76 U.S. Distrct Cout for Eastern District of Missouri, filed 1/12/76,* the Government prays judgment against this partnership for funds alledgedly wrongfully diverted in violation of their Regulatory Agreement.

Obligations of the Partnership incurred since appointment of Receiver in September, 1976, in amounts unknown to Petitioner, inasmuch as there is no access to the information held exclusively by the Receiver; Unknown.

Farr Insurance, Inc., West Palm Beach, Florida; $1,666.66

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:

MANSION HOUSE CENTER SOUTH
REDEVELOPMENT COMPANY
A Missouri limited partnership,
Debtor.
IRS NO. 43-6050817

In Proceedings for an Arrangement Under Chapter XII
of the Bankruptcy Act
No. 78B5163

TO: The Honorable Judge in Bankruptcy

ORIGINAL PETITION UNDER
CHAPTER XII

1. Petitioner's post office addres sis 250 Royal Palm Way, Palm Beach, Florida, 33480.

2. No other case under the Bankruptcy Act initiated on a petition by or against petitioner is now pending.

3. Petitioner is qualified to file this petition and is entitled to the benefits of Chapter XII of the Act.

4. Petitioner is unable to pay its debts as they mature.

5. Petitioner intends to file a plan pursuant to Chapter XII of the Act.

6. Petitioner has as its General Partner, the Mansion House Center South Redevelopment Corporation, a Missouri Corporation in good standing in that state, whose registered agent is Frank A. Bussmann, attorney, at 8003 Forsyth Blvd., Clayton, Missouri 63105.

7. The aforesaid General Partner, the Mansion House Center South Redevelopment Corporation, is wholly owned by

REMSCO Real Estate Associates, Ltd., an Illinois limited partnership whose principal office in Illinois is c/o Theodore Netzky, the B. L. Rosenberg & Company, 180 North LaSalle Street, Chicago, Illinois.

8. Petitioner further states that it is named as a co-defendant in a suit styled United States of America v. Mansion House Center Redevelopment Company, case #76-20, pending in the United States District Court for the Eastern Distirct of Missouri, Eastern Division, before the Honorable John Nangle, Judge, in Count Two, of which Complaint, judgment is prayed against this defendant for sums the Court may find due in breach of Regulatory Agreement with the Department of Housing and Urban Development, on behalf of which the suit was instituted.

WHEREFORE, petitioner prays for relief in accordance with Chapter XII of the Act.

.....
Robert B. Chatz, one of the Attorneys
for Mansion House Center South
Redevelopment Company

Of Counsel:
Robert B. Chatz
Johin W. Costello
Karen Gross
Phillip M. Heller
Arvey, Hodes, Costello & Burman
180 North LaSalle Street
Chicago, Illinois 60601
312/855-5000

STATE OF FLORIDA
COUNTY OF PALM BEACH

The undersigned, the Corporate General Partner of the Partnership named as petitioner on the foregoing petition, by and through its President does hereby swear that the statements contained therein are true according to the best of its knowledge, information and belief, and that the filing of this petition on behalf of the partnership has been authorized.

MANSION HOUSE CENTER SOUTH
REDEVELOPMENT CORPORATION
BY:.....
President of the General Partner

Subscribed and sworn to before me on 7th, of July, 1978.

.....
Notary Public

STATE OF FLORIDA
COUNTY OF PALM BEACH

The undersigned, General Partner of REMSCO Real Estate Associates, Ltd., an Illinois limited partnership, does hereby swear that this Partnership owns all the capital stock of Mansion House Center Redevelopment Corporation, the Corporate General Partner of the Petitioner, and does hereby swear that the statements contained therein are true according to the best of its knowledge, information and belief, and that the filing of this petition on behalf of the partnership has been authorized.

REMSCO REAL ESTATE ASSOCIATES, INC.
BY:.....
General Partner

PARTIAL
LIST OF CREDITORS

General Electric Pension Trust (on note), One River Road, Schnectady, New York 12345; $1,747,928.00

General Electric Pension Trust (on Land); Lease on land owned by Mansion House Land Redevelopment Corporation until April 21, 2040 (62 yrs) at $124,649.00 per year, prior to any debt service.

Coopers and Lybrand, Suite 2700, One Mercantile Center, St. Louis, Missouri 63101; $8,250.00

Department of HUD, Washington, D.C.; $12,000,000.00 Mortgage in default. $3,333,000.00 Interest in default.

Moran-Turner, New York, New York; $50,000.00

United States of America; In its suit, *USA v. Mansion House Center North Redevelopment Company, et al., U.S. District Court for Eastern District of Missouri, filed 1/12/76*, the Government prays judgment against this partnership for funds alledgedly wrongfully diverted in violation of their Regulatory Agreement.

Obligations of the Partnership incurred since appointment of Receiver in September, 1976, in amounts unknown to Petitioner, inasmuch as there is no access to the information held exclusively by the Receiver; Unknown.

Farr Insurance, Inc., West Palm Beach, Florida; $1,666.66

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 76-20C(3)

UNITED STATES OF AMERICA,
Plaintiff,
vs.
MANSION HOUSE CENTER
etc., et al.,
Defendants.

ORDER

Request of Receiver for Instructions and Application for Show Cause Order having been presented and reviewed, and the Court taking notice of the Receiver's prior Request for Instructions and Determination of Limited Partnership and the full evidentiary hearing which took place pursuant thereto and the Court's Order and Memorandum dated February 4, 1977,

IT IS HEREBY ORDERED that the Receiver pendente lite does not have in his possession any assets of any partnership on whose behalf Chapter XII proceedings have been filed in United States District Court, Northern District, of Illinois, Eastern Division, in Cause Nos. 78B 5161, 78B 5162, and 78B 5163.

IT IS FURTHER ORDERED that the Receiver is not affected or bound by the provisions of Rule 12-43 of the Rules of Bankruptcy Procedure and that said Rule is not applicable to the Receiver by virtue of the three Chapter XII proceedings in Cause Nos. 78B 5161, 78B 5162, and 78B 5163 now pending in the United States District Court, Northern District of Illinois, Eastern Division.

IT IS FURTHER ORDERED that the Receiver continue to

perform his duties in all respects as Receiver of the Mansion House Center Properties in accordance with the Order of this Court dated September 8, 1976.

IT IS FURTHER ORDERED that Defendants Maurice B. Frank, Mansion House Center South Redevelopment Company, Mansion House Center Redevelopment Company, and Mansion House Center North Redevelopment Company show cause on the 15th day of August 1978 at 9:30 o'clock in the A.M., why a temporary injunction should not issue, enjoining said Defendants from further proceeding with said bankruptcy petitions filed in Chicago, Illinois and Defendant Maurice B. Frank is hereby ordered to appear in person at said Show Cause Hearing at the time and date aforesaid.

JOHN F. NANGLE
United States District Judge

Dated July 17, 1978

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 76-20 C (3)

UNITED STATES OF AMERICA,
Plaintiff,
vs.
MANSION HOUSE CENTER,
etc. et al.,
Defendants.

ORDER

Pursuant to the memorandum filed this date,

IT IS HEREBY ORDERED that pending a final adjudication on the merits of the various issues in this cause, defendants Maurice B. Frank, Mansion House Center Redevelopment Company, Mansion House Center South Redevelopment Company, Mansion House Center North Redevelopment Company, and their respective general and limited partners, agents, representatives and attorneys are jointly and severally enjoined from doing any of the following acts:

(1) Filing or causing to be filed any bankruptcy or reorganization proceeding in any state or federal court which claims or asserts any ownership or other interest in any of the Mansion House properties more particularly described as HUD Projects 085-32008, 085-32009, and 085-32010.

(2) Asserting or claiming in the pending Chapter XII proceedings in the Northern District of Illinois (Cause Numbers 78 B 5161, 78 B 5162 and 78 B 5163 that the entities who are petitioning debtors in said cases have any ownership or other interest in the Mansion House properties more particularly described as HUD Projects 085-32008, 085,32009, and 085-32010.

(3) Attempting by any other means, in addition to those listed above, to cause the Receiver in this action to surrender possession, control and administartion of the aforesaid Mansion House properties to any bankruptcy or reorganization trustee, debtor in possession, assignee, or any other person or official unless same is specifically authorized by this Court.

JOHN F. NANGLE
United States District Judge

Dated: August 17, 1978.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 76-20 C (3)

UNITED STATES O FAMERICA,
Plaintiff,
vs.
MANSION HOUSE CENTER,
etc., et al.,

MEMORANDUM

This matter is before the Court upon the receiver's motion for a preliminary injunction, enjoining certain defendants from proceeding with Chapter XII petitions pending in the United States District Court for the Northern District of Illinois. Plaintiff brought this suit as mortgagee of an apartment and motor hotel complex, seeking a variety of relief to protect its interest therein. On September 8, 1976, this Court appointed a receiver pendente lite. The order of this Court provided in part:

> IT IS FURTHER ORDERED that said defendants [Mansion House Center North Redevelopment Company, Mansion House Center Redevelopment Company and Mansion House Center South Redevelopment Company] and all agents, servants and employees of said defendants be and are restrained and enjoined from interfering in any way with said mortgaged properties or the receiver in his possession, control and management of said properties during the pendency of this action.

On December 30, 1976, defendants Maurice B. Frank, asserting the status of individual general partner, filed petitions pursuant to Chapter XII of the Bankruptcy Act on behalf of Mansion House Center South Redevelopment Company, a limited partnership. Following hearings, this Court held on

February 4, 1977 that defendant Frank was not the individual general partner of any partnership whose assets were in the possession of this Court's receiver. On March 10, 1977, this Court denied as moot plaintiff's motion to hold defendant Frank in contempt of court for violation of the September 8, 1976 order. The Court stated:

> It is the Court's conclusion that the September 8, 1976 order of this Court, restraining defendant Frank from interfering in any way with the receiver in his possession of the mortgaged properties during the pendency of this action, is sufficiently clear and precise to cover the conduct asserted as contempt herein [the December 30, 1976 Chapter XII petitioners].

In the March 10, 1977 order, the Court concluded that defendant Frank had filed the December, 1976 Chapter XII petitions in bad faith, and had violated the September 8, 1976 order of this Court. While denying the motion to hold defendant Frank in contempt because of mootness, the Court stated that defendant Frank "should stand forewarned that serious consequences might have resulted from such contempt".

Nevertheless, on July 11, 1978, defendant Frank, acting on behalf of Mansion House Center Redevelopment Corporation, Mansion House Center South Redevelopment Corporation and Mansion House Center North Redevelopment Corporation, filed petitions pursuant to Chapter XII of the Bankruptcy Act on behalf of Mansion House Center Redevelopment Company, Mansion House Center South Redevelopment Company and Mansion House Center North Redevelopment Company. The Redevelopment Corporations are the corporate general partners of the corresponding Redevelopment Companies, all limited partnerships. The petitions were filed in the United States District Court for the Northern District of Illinois.

A hearing was held on the instant motion on August 15, 1978. The evidence adduced therein casts serious doubts upon the procedural propriety of the filings. See Bankruptcy Rule 12-8. In addition, it is clear that defendant Frank is again attempting to file petitions on behalf of partnerships whose assets are not in the possession of this Court's receiver, see the February 4, 1977 order of this Court, and yet again claiming that the assets of the petitioning partnerships are in fact the assets in the possession of this Court's receiver.

Since September 8, 1976, defendants herein have been enjoined "from interfering in any way with said mortgaged properties or the receiver in his possession, control and management of said properties during the pendency of this action". Moreover, defendants were instructed that the filing of petitions pursuant to Chapter XII of the Bankruptcy Act constituted interference within the meaning of the September 8, 1976 order of this Court. See March 10, 1977 order. Nevertheless, these defendants acted to clear disregard of these orders.

Defendants argue that the automatic stay provisions of Chaper XII of the Bankruptcy Act prevent this Court from proceeding. See Bankruptcy Rule 12-43(a). Defendants ignore, however, the effect of the September 8, 1976 order of this Court. These defendants had been prohibited by this Court from taking the action contested herein. While the filing of bankruptcy may be a constitutional right, see *In re Mt. Forest Fur Farms of America*, 103 F.2d 69 (6th Cir. 1939), *cert. denied*, 308 U.S. 583 (1939), the exercise of constitutional rights may permissibly be enjoined if circumstances so warrant. *Cf., Ex parte Melvin Leroy Tyler*, No. 75-970 C (3) (E.D.Mo. December 5, 1975).

The filing of these petitioners has threatened this Court's ability to proceed herein. It has violated orders of this Court and has undermined the very reason for those orders, the protection of the interests of the parties involved in this litigation. Accordingly, the receiver's motion for a temporary injunction will be granted.

JOHN F. NANGLE
United States District Judge

Dated: August 17, 1978.

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 78-1679

United States of America,
Gerald A. Rimmel, Receiver,
Appellee,

v.

Mansion House Center North Redevelopment Company a limited partnership; Mansion House Center Redevelopment Company, a limited partnership; Mansion House Center South Redevelopment Company, a limited partnership; Mansion House Center North Redevelopment Corporation, a corporation, and Maurice B. Frank, General Partners of Mansion House Center North Redevelopment Company, a limited partnership; Mansion House Center Redevelopment Corporation, a corporation, and Maurice B. Frank, General Partners of Mansion House Center Redevelopment Company, a limited partnership; Mansion House Center South Redevelopment Corporation, a corporation, and Maurice B. Frank, General Partners of Mansion House Center South Redevelopment Company, a limited partnership,

Defendants-Appellants;

REMSCO Management, Inc., a corporation; Mansion House Motor Hotel Company, a limited partnership; Ocean Sea Breeze, Inc., a corporation, and Maurice B. Frank, General Partners of Mansion House Motor Hotel Company, a limited partnership; Mansion House Motor Hotel Corporation, a corporation; Willowbrook Realty, Inc., a corporation; Pierre V. Heftler; E. J. Ehrlich; Hart Perry; Norman S. Altman; Mansion House Center North Tower Redevelopment Corporation; Mansion House Center Tower Redevelopment Corporation; Mansion House Center South Tower Redevelopment Coropration.

Submitted: January 12, 1979.
Filed: February 28, 1979

Before LAY, BRIGHT and STEPHENSON, Circuit Judges.

This is an appeal[1] from an order of the district court[2] enjoining appeallants Mansion House Center North Redevelopment Company, Mansion House Center Redevelopment Company, Mansion House Center South Redevelopment Company, all limited partnerships, Maurice B. Frank, former general partner of the companies, and others (hereafter, all parties are referred to as the Frank Group), from asserting any ownership interests in the Mansion House Tower complex in St. Louis, Missouri, in any future of pending Chapter XII[3] bankruptcy proceedings and from interfering with the possession or control of the court-appointed receiver of these properties. We affirm.

---

[1]Jurisdiction in this court is based on 28 U.S.C. §1292(a)(1).

[2]The Honorable John F. Nangle, United States District Judge for the Eastern District of Missouri.

[3]11 U.S.C. §§ 801 et seq.

This order arises from a suit filed in the Eastern District of Missouri on January 12, 1976, by the United States as mortgagee of the Mansion House towers, to protect its interests in this complex, which had been constructed with the proceeds of loans insured by the Department of Housing and Urban Development. On September 8, 1976, the court appointed a receiver and enjoined the Frank Group from interferring with the Mansion House properties or the receiver's management and control of them during the pendency of the action. *See United States v. Mansion House Center N. Redev. Co.*, 419 F. Supp. 85 (E.D. Mo. 1976). On December 30, Maurice Frank, who had resigned as general partner of the companies, filed a petition in bankruptcy in Orlando, Florida, for the South Redevelopment Company, as president of the Mansion House Center South Redevelopment Corporation. Shortly thereafter, his attorney demanded of the receiver that he turn over immediate possession of the assets of the South Company.

Pursuant to this demand, the receiver requested instructions from the United States District Court in Missouri. On February 4, 1977, that court found the partnership on whose behalf Frank filed the Chapter XII petition was not the partnership whose assets the receiver held, and that therefore the receiver would not be required to surrender the assets of the South Company. *United States v. Mansion House Center N. Redev. Co.*, 426 F. Supp. 479, 483 (E.D. Mo. 1977).

Thereupon, Frank sought a writ of mandamus to compel the district court to withdraw its February 4 order; the writ was refused by this court. *Frank v. Nangle*, No. 77-1165 (8th Cir. Mar. 2, 1977). The government then moved to hold Frank in contempt for violating the non-interference provisions of the order appointing the receiver, and though the district court denied the motion as moot, it warned Frank of the serious

possible consequences of his actions. *United States v. Mansion House Center N. Redev. Co.*, No. 76-20 C (3) (E.D. Mo. Mar. 10, 1977).[4]

On September 1, 1977, the United States amended its original complaint to seek a declaration of identity of the owner-mortgagor. Both the Frank Group and a group purporting to have succeeded to ownership of the properties filed motions for summary judgment. Frank's motion was denied. *United States v. Mansion House Center N. Redev. Co.*, No. 76-20 C (3) (E.D. Mo. Mar. 15, 1977). Recently, the motion of the purported successor group was granted, entitling it to possession of the assets of the partnerships. *United States v. Mansion House Center N. Redev. Co.*, No. 76-20 C (3) (E.D. Mo. Dec. 22, 1978).

Once again, on July 11, 1978, the Frank Group filed Chapter XII bankruptcy petitions in which it claimed an interest in the Mansion House properties. This time it filed in Chicago, Illinois. The petitions were filed for all three partnerships by Maurice B. Frank, as president of the Mansion House Center, North and South Redevelopment Corporations, general partners of the companies. As before, the court-appointed receiver applied for instructions that he was not bound by the Illinois bankruptcy proceedings. In addition, the receiver requested a show cause order for a temporary injunction against the Frank Group enjoining it from proceeding further with the bankruptcy petitions filed in Illinois.

On August 17, 1978, the district court filed a memorandum granting the receiver's request for relief. *United States v. Mansion House Center*, 455 F. Supp. 434 (E.D. Mo. 1978).

---

[4]The Florida proceedings were transferred by the Florida bankruptcy court to the St. Louis bankruptcy court and later dismissed by the Frank Group on May 11, 1977.

The accompanying order enjoins the Frank Group from doing any of the following acts:

> (1) Filing or causing to be filed any bankruptcy or reorganization proceeding in any state or federal court which claims or asserts any ownership or other interest in any of the Mansion House properties ° ° °.
>
> (2) Asserting or claiming in the pending Chapter XII proceedings in the Northern District of Illinois ° ° ° that the entities who are petitioning debtors in said cases have any ownership or other interest in the Mansion House properties ° ° °.
>
> (3) Attempting by any other means, in addition to those listed above, to cause the Receiver in this action to surrender possession, control and administration of the aforesaid Mansion House properties to any bankruptcy or reorganization trustee, debtor in possession, assignee, or any other person or official unless same is specifically authorized by this Court.

In this appeal the Frank Group asserts that the district court erred in enjoining the Group from proceeding with the bankruptcy action in Chicago. It reaches this conclusion by two routes. First, it argues that the non-interference provision of the district court's order appointing the receiver is the basis for the present injunction. This established, the Frank Group contends that the non-interference provision is too vague to have given the Group notice that it was restrained from filing under the bankruptcy laws. In addition, the Frank Group attempts to link the non-interference provision with the government's prayer for relief in its original complaint, arguing that because the government did not include a specific demand to enjoin the filing of bankruptcy petitions, the district court could not in turn enter an order beyond the scope of the relief requested.

Whatever the origin of the non-interference provision or however it may be interpreted, the injunction now being appealed is sufficiently clear to alert the Group to its duty. We also note that the injunction does not bar the Group from proceeding with any or all bankruptcy actions it files; it merely prevents it from asserting any ownership interests in the Mansion House complex in any bankruptcy proceeding.

The Group also argues that the district court was without power or jurisdiction to enter its injunction. It urges that this result follows from an automatic ouster or jurisdiction accomplished by its filing of bankruptcy petitions in Chicago. Bankruptcy Rule 12-43 does provide that filing of a Chapter XII petition will stay certain court proceedings.

Initially, we note that the district court had jurisdiction to determine who had possession of the Mansion House properties, in order to ascertain if it had jurisdiction of the case. *See Amoco Pipeline Co. v. Admiral Crude Oil Corp.*, 490 F.2d 114, 116 (10th Cir. 1974).

Having decided that the Frank Group had no proprietary interests in the South partnership, *United States v. Mansion House Center N. Redev. Co., supra*, 426 F. Supp. at 483, it was proper for the court to proceed and enter such orders as to the Mansion House Center South Company as it deemed necessary, to bar interference with its receiver. *See SEC v. United Fin. Group, Inc.*, 576 F.2d 217, 220 (9th Cir. 1978). By logical extension, this determination by the district court would reach the North and Center partnerships because of the identity of ownership of each entity. In fact, that is the effect of the district court's holding of December 22, 1978, which entitles the successor partnerships to possession of the Mansion House properties.

In view of these holdings it is difficult to escape the conclusion that the district court was not bound by the stay provisions of the Bankruptcy Act, as the court holds no property belonging to the Frank Group and which was, or could be, subject to the jurisdiction of the bankruptcy court in Chicago.[5] *See Mid-Jersey Natl's Bank v. Fidelity-Mortgage Investors*, 518 F.2d 640, 643 (3d Cir. 1975). Comparison with cases concerning the conjunction of the Bankruptcy Act and the federal interpleader provisions reinforce this conclusion. For example, in *Dakota Livestock Co. v. Keim*, 552 F.2d 1302 (8th Cir. 1977), we said that a party with actual possession of property may interplead as to funds whose ownership is disputed, even where one claimant is a trustee in bankruptcy. *Id.* at 1305; *see In re Stanndco Devel., Inc.*, 534 F.2d 1050, 1053 (2d Cir. 1976); *Bradley v. St. Louis Terminal Warehouse Co.*, 189 F.2d 818 (8th Cir. 1951); *NYTCO Services, Inc. v. Hurley's Grain Elevator Co.*, 422 F. Supp. 114, 116 (W.D. Tenn. 1976).

---

[5]The government contends that section 517 of the Chandler Act, 11 U.S.C. § 917, is an alternative basis upon which we may affirm the district court. The text of that section reads thus:

> Nothing contained in this chapter shall be deemed to affect or apply to the creditors of any debtor under a mortgage insured pursuant to the National Housing Act and Acts amendatory thereof and supplementary thereto; nor shall its provisions be deemed to allow extension or impairment of any secured obligation held by Home Owners' Loan Corporation or by any Federal Home Loan Bank or member thereof.

We find few cases using or interpreting this section of the Bankruptcy Act. **See Homeowners Loan Corp. v. Creed**, 108 F.2d 153 (5th Cir. 1939) (section 517 applies only to Chapter XII of the Act). Two recent cases, **United States v. Bristol Hills Aapartments**, No. 8-71118 (E.D. Mich. Dec. 14, 1978), and **In re 83rd Realty Co.**, No. 76 B 1922 (S.D.N.Y. April 14, 1978), rely exclusively on section 517. In both cases, the district court held that section 517 clearly permitted the bankruptcy court to dismiss a Chapter XII petition on motion of the holder of a mortgage insured pursuant to the National Housing Act.

We find this argument persuasive, but we do not base our decision on section 517, since in this case, other grounds are sufficient. Additionally, the district court in this case did not rely on section 517.

Moreover, in light of the warning the Frank Group received from the district court when it denied the government's motion to hold the Frank Group in contempt and in view of the almost contumacious conduct of the Group in then filing another Chapter XII bankruptcy proceeding in Chicago, we believe that the injunction of the district court was required to vindicate its authority. *Cf. Ruderer v. United States*, 462 F.2d 897, 899 (8th Cir.), *appeal dismissed*, 409 U.S. 1301 (1972) (plaintiff-appellant, upon filing of 22nd complaint in same matter, properly enjoined by district court from filing like action because of bad faith motivation).

We have considered appellants' other arguments and find them to be without merit.

Affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.

RULE 12-43,
BANKRUPTCY RULES OF PROCEDURE

(a) Stay of Actions and Lien Enforcement. A petition filed under Rule 12-6 or 12-7 shall operate as a stay of the commencement or the continuation of any court or other proceeding against the debtor, or the enforcement of any judgment against him, or of any act or the commencement or continuation of any court proceeding to enforce any lien against his property, or of any court proceeding for the purpose of the rehabilitation of the debtor or the liquidation of his estate.

(b) Duration of Stay. Except as it may be deemed annulled under subdivision (c) or may be terminated, annulled, modified, or conditioned by the bankruptcy court under subdivision (d), (e) or (f) of this rule, the stay shall continue until the case is closed, dismissed, or converted to bankruptcy or the property subject to the lien is, with the approval of the court, abandoned or transferred.

(c) Annulment of Stay. At the expiration of 30 days after the first meeting of creditors, a stay provided by this rule other than a stay against lien enforcement shall be deemed annulled as against any creditor whose claim has not been listed in the schedules and who has not filed his claim by that time.

(d) Relief from Stay. On the filing of a complaint seeking relief from a stay provided by this rule, the bankruptcy court shall, subject to the provisions of subdivision (e) of this rule, set the trial for the earliest possible date, and it shall take precedence over all matters except older matters of the same character. The court may, for cause shown, terminate, annul, modify or condition such stay. A party seeking continuation of a stay against lien enforcement shall show that he is entitled thereto.

(e) Ex Parte Relief from Stay. On the filing of a complaint seeking relief from a stay against any act or preceeding to enforce a lien or any proceeding commenced for the purpose of rehabilitation of the debtor or the liquidation of his estate, relief may be granted without written or oral notice to the adverse party if (1) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss, or damage will result to the plaintiff before the adverse party or his attorney can be heard in opposition, and (2) the plaintiff's attorney certifies to the court in writing the efforts, if any, which have been made to give

the notice and the reasons supporting his claim that notice should not be required. The party obtaining relief under this subdivision shall give written or oral notice thereof as soon as possible to the trustee, receiver, or debtor in possession and to the debtor and, in any event, shall forthwith mail to such person or persons a copy of the order granting relief. On 2 days' notice to the party who obtained relief from a stay provided by this rule without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its reinstatement, and in that event the court shall proceed to hear and determine such motion as expeditiosly as the ends of justice require.

(f) Availability of Other Relief. Nothing in this rule precludes the issuance of, or relief from, any stay, restraining order, or injunction when otherwise authorized.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

No. 76-20 C (4)

UNITED STATES OF AMERICA,
Plaintiff,
vs.
MANSION HOUSE CENTER,
etc., et al.,
Defendants.

ORDER

Pursuant to the memorandum filed this date,

IT IS HEREBY ORDERED that plaintiff's motion for appointment of a receiver pentente lite be and is granted

and that MR. GERALD RIMMEL is hereby appointed receiver of the properties described in the complaint filed herein. together with all rents, issues and profits therefrom and all buildings, improvements, fixtures, apparatus, appurtenances, building materials, equipment and articles of personal property thereon or therein.

IT IS FURTHER ORDERED that the receiver shall file in no more than five (5) days of this date bonds in the penal sum of $350,000.00 for the North Tower (HUD Project No. 085-32008), $375,000.00 for the Center Tower (HUD Project No. 085-32009) and $150,000.00 for the South Tower (HUD Project No. 085-32010) to be approved by the Clerk of this Court, conditioned for the faithful performance of his official duties.

IT IS FURTHER ORDERED that the receiver is directed to hold, protect and preserve, manage and control said monies and properties until further order of this Court and to that end, is specifically authorized and empowered to:

(1) collect and receive all rents, issues and profits accrued or accruing from the mortgaged properties;

(2) employ, discharge and fix the compensations of all such agents and employees as are necessary for the management and operation of the mortgaged properties; and

(3) pay the essential operating and maintenance expenses and make such repairs as may be necessary to preserve the properties and prevent their deterioration.

IT IS FURTHER ORDERED that plaintiff shall pay real property taxes for the subject properties until further order of the Court and that plantiff may arrange for and pay, if it so chooses, such property insurance coverage on the mortgaged premises as it deems appropriate.

IT IS FURTHER ORDERED that defendants Mansion House Center North Redevelopment Company, Mansion House Center Redevelopment Company, and Mansion House Center South Redevelopment Company, and all agents, servants and employees of said defendants shall turn over and deliver to the receiver or his duly authorized representative within such time as the receiver shall demand or as otherwise ordered by the Court all of the mortgaged properties, real, personal and mixed including the bank accounts associated with or derived in any way from the mortgaged properties, tenants' security deposits, and all property of any nature in, on or connected with or used in the operation of the mortgaged properties.

IT IS FURTHER ORDERED that said defendants and all agents, servants and employees of said defendants be and are restrained and enjoined from interfering in any way with said mortgaged properties or the receiver in his possession, control and management of said properties during the pendency of this action.

IT IS FURTHER ORDERED that the receiver shall acquaint himself at once with the extent and condition of the mortgaged properties and make and file a full and comprehensive inventory with this Court showing the properties in his hands within sixty (60) days of this date, and that he shall furnish a copy of said inventory to plaintiff at the time of filing the original with the Court.

IT IS FURTHER ORDERED that the receiver shall file a detailed report of his receipts and disbursements and all transactions entered into by him in an official capacity in connection with his possession, preservation and management of the mortgaged properties, the first such report to be filed ninety (90) days from this date, with subsequent reports to be filed

at three (3) month intervals thereafter and at the conclusion of the proceedings herein.

IT IS FURTHER ORDERED that any accumulation of net receipts in the hands of the receiver upon the date of the quarterly reports required above in excess of fifty percent (50%) of the amount of the receiver's bond shall be paid over to the plaintiff for application on the mortgage indebtedness.

JOHN F. NANGLE
United States District Judge

Dated: September 8, 1976.

Supreme Court, U. S.
FILED
JUL 23 1979
MICHAEL RODAK, JR., CLERK

No. 78-1784

In the Supreme Court of the United States

OCTOBER TERM, 1978

MANSION HOUSE CENTER NORTH REDEVELOPMENT COMPANY, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A25-A32) is reported at 594 F. 2d 653. The order and opinion of the district court (Pet. App. A20-A25) is reported at 455 F. Supp. 434.

JURISDICTION

The judgment of the court of appeals was entered on February 28, 1979. The petition for a writ of certiorari was filed on May 29, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court violated the automatic stay provisions of Bankruptcy Rule 12-43 by enjoining petitioners from interfering with a court-appointed receiver's possession or control of certain properties.

STATEMENT

The United States filed this action in the United States District Court for the Eastern District of Missouri to protect the interests of the Secretary of Housing and Urban Development as mortgagee of the Mansion House Center.[1] The complaint sought the appointment of a receiver for the project and the recovery of project funds expended in violation of agreements between HUD and the mortgagors.[2] On September 8, 1976, the district court appointed respondent Rimmel as receiver to assume control and manage the project. *United States* v. *Mansion House Center North Redevelopment Co.*, 419 F. Supp. 85 (E.D. Mo. 1976).

In the fall of 1976, as a result of the resignation of Maurice B. Frank as individual general partner of the mortgagor partnerships, a dispute arose between two groups, each claiming to control the partnerships owning

[1]The Mansion House Center is an apartment and motor hotel complex located in St. Louis. It consists of three separately owned towers and was constructed through loans insured by HUD pursuant to the National Housing Act, 12 U.S.C. 1701 *et seq.*

[2]Judgments totalling $1,149,081 have been entered against Maurice B. Frank, the past individual general partner of mortgagors, and his wholly-owned corporations, for diversions of project funds in violation of the mortgage agreements between HUD and the mortgagors. *United States* v. *Mansion House Center*, 463 F. Supp. 595 (E.D. Mo. 1978); *United States* v. *Mansion House Center North Redevelopment Co.*, 447 F. Supp. 951 (E.D. Mo.), aff'd, 587 F. 2d 924 (8th Cir. 1978).

the Mansion House Center.[3] One group, petitioners herein, is controlled by Frank; the competing group is controlled by representatives of limited partners.

In December 1976 and January 1977, petitioners filed petitions (Pet. App. A4-A6) for an arrangement under Chapter XII of the Bankruptcy Act, 11 U.S.C. 801 *et seq.*, in the United States District Court for the Middle District of Florida and demanded that the receiver relinquish to them control of the project. In response to the receiver's request for instructions, the Missouri district court determined, after a three-day hearing in which petitioners participated, that the receiver was not in possession of any assets belonging to petitioners and that he therefore was not required to respond to the turn-over demand. *United States* v. *Mansion House Center North Redevelopment Co.*, 426 F. Supp. 479 (E.D. Mo. 1977), petition for mandamus denied *sub nom. Frank* v. *Nangle*, No. 77-1165 (8th Cir. Mar. 2, 1977). In a related proceeding, the Missouri district court also determined that the Chapter XII petitions had been filed in bad faith and violated the non-interference provisions of the order appointing the receiver. *United States* v. *Mansion House Center*, No. 76-20C(3) (E.D. Mo. Mar. 10, 1977). The Chapter XII proceedings were transferred to the Eastern District of Missouri and later dismissed.[4]

[3]The partnerships, Mansion House Center North Redevelopment Company, Mansion House Center Redevelopment Company, and Mansion House Center South Redevelopment Company, own respectively the North Tower, Center Tower and South Tower of the Mansion House complex.

[4]Faced with conflicting claims to the ownership of the project, the government amended its complaint to seek a judicial determination of who the owners were. Petitioners' motion for summary judgment on the ownership question was denied; the motion for summary judgment of the group controlled by representatives of the limited partners was granted. *United States* v. *Mansion House Center*, 463 F. Supp. 591 (E.D. Mo. 1978), appeal docketed, No. 79-1169 (8th Cir. Feb. 26, 1979).

Petitioners again filed Chapter XII petitions, this time in the United States District Court for the Northern District of Illinois (Pet. App. A7-A18). The receiver again sought instructions from the district court in Missouri, which once more informed the receiver (Pet. App. A19-A25) that he was not in possession of any assets belonging to petitioners and that he was not bound by the stay provisions of Bankruptcy Rule 12-43, 11 U.S.C. App., at 1512.[5] In addition, the court ordered petitioners to show cause why they should not be restrained from proceeding with their Chapter XII petitions (Pet. App. A20).

Petitioners appeared at the hearing and participated in the examination of witnesses and introduction of evidence. On August 17, 1978, the district court issued the order that is the subject of this petition. The order enjoins petitioners from: (1) filing any additional bankruptcy petitions claiming ownership of the Mansion House Center; (2) claiming ownership of the project in the pending bankruptcy proceedings; and (3) attempting by any means to cause the receiver to surrender possession of the project without specific authorization from the Missouri district court (Pet. App. A20-A21). In its accompanying memorandum, the court stated (Pet. App. A25):

> The filing of these petitioners has threatened the Court's ability to proceed herein. It has violated orders of this Court and has undermined the very reason for those orders, the protection of the interests of the parties involved in this litigation.

The court of appeals affirmed (Pet. App. A25-A32). It described petitioners' conduct in filing the second set of Chapter XII petitions as "almost contumacious" (*id.* at A32) and held that the district court and the receiver were not bound by the stay provisions under Chapter XII of the Bankruptcy Act because the Mansion House Center did not belong to petitioners and hence was not subject to the jurisdiction of the bankruptcy court in Illinois (*id.* at A31).

[5]Rule 12-43(a) (Pet. App. A32) provides that a petition for relief under Chapter XII shall stay any other proceeding against the debtor.

ARGUMENT

The court of appeals' decision is correct; moreover, the issue that petitioners present is entirely factbound and does not warrant this Court's review.

Petitioners contend (Pet. 6-7) that the court of appeals erred in relying on the district court's decision dismissing the Chapter XII petitions originally filed in the Middle District of Florida for the proposition that petitioners had no interest in the partnership owning Mansion House Center South. Petitioners urge that the district court's decision related only to the interests of the partnership of which Maurice Frank was a general partner and that the Chapter XII petitions filed in the Northern District of Illinois were not filed by Frank individually. Therefore, petitioners argue, the stay provisions of Bankruptcy Rule 12-43 should have been given effect.

This contention is without merit. The district court's order dismissing the Florida petitions stated that "the partnership on whose behalf defendant Frank filed the Chapter XII petition is not the partnership whose assets the receiver possesses." 426 F. Supp. at 483. The petitions filed in Illinois were filed on behalf of the same partnerships, and the district court's ruling cited by the court of appeals is therefore fully applicable.

In any event, the district court's conclusion that petitioners lack any proprietary interest in the properties held by the receiver is amply supported by the record

below—a proposition petitioners do not contest. See Pet. App. A24 and note 4, *supra*. Once the validity of the determination regarding ownership is established, it is clear that the lower court applied the correct legal principles. A district court possesses jurisdiction to determine its own jurisdiction (see *Bell* v. *Hood*, 327 U.S. 678, 682 (1946)), and, where, as here, the debtor has no interest in the property at issue, the court is not subject to the stay provisions of Bankruptcy Rule 12-43. See, *e.g.*, *Dakota Livestock Co.* v. *Keim*, 552 F. 2d 1302, 1305 (8th Cir. 1977); *Mid-Jersey Nat'l Bank* v. *Fidelity-Mortgage Investors*, 518 F. 2d 640, 644 (3d Cir. 1975); *Amoco Pipeline Co.* v. *Admiral Crude Oil Corp.*, 490 F. 2d 114, 116 (10th Cir. 1974); *In re Whitney*, 113 F. 2d 426, 428 (2d Cir. 1940); *NYTCO Services, Inc.* v. *Hurley's Grain Elevator Co.*, 422 F. Supp. 114, 120 (W.D. Tenn. 1976).[6]

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[6]Petitioners rely chiefly upon *Fidelity Mortgage Investors* v. *Camelia Builders, Inc.*, 550 F. 2d 47 (2d Cir. 1976), cert. denied, 429 U.S. 1093 (1977). But in that case, the Second Circuit expressly distinguished (550 F. 2d at 54) *Mid-Jersey Nat'l Bank* v. *Fidelity-Mortgage Investors*, 518 F. 2d 640 (3d Cir. 1975), the decision cited by the Eighth Circuit as authority for its decision here (Pet. App. A31). In *Mid-Jersey Nat'l Bank*, as here, the debtor had no interest in the property at issue, thereby depriving the bankruptcy court of jurisdiction and rendering inapplicable the stay provisions of Bankruptcy Rule 12-43.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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J. CHRISTOPHER KOHN
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JULY 1979

DOJ-1979-07